

1897-048 Chancery Causes: Samuel B. Poteet vs. Samuel Poteet
Lee Co.

Collins, Pendergrass, Ely, Goslyn, Elliott

1 Plat

CA-Contract Dispute
T-Property

To the Honorable W.T. Miller, Judge of the Circuit Court for Lee County Virginia:

Humbly complaining, your orator, Samuel B. Poteet, a citizen of said County, would respectfully represent and show unto your honor,

That on or about the 22nd day of July 1895, he purchased from his father, Samuel Poteet, a tract of land situated in Lee County, Virginia, on the South side of Powell's River, containing one hundred acres, for the price of nine hundred dollars, every cent of which has been paid in cash, as will more fully appear by the receipt of the said Samuel Poteet, dated the 22nd day of July 1895, and herewith filed as a part hereof marked "A".

At the time your orator purchased said land the said Samuel Poteet was indebted to your orator in the sum of \$300.00. He was further indebted on judgments and executions against him in which Judge Orr was the Attorney for the plaintiffs, amounting to some three or four hundred dollars and to other parties in other sums, and he applied to your orator to assist him, and furnish with as much as six hundred dollars and purchase from him said tract of land. This your orator reluctantly consented to do, and made the trade as aforesaid, and at that time paid to his father in cash \$590.00, ~~XXXXXX~~ for which the said Samuel Poteet executed to him a receipt, and afterwards to wit, on the 2nd day of January 1896, your orator paid him the other ten dollars and at that time gave him up the other receipt, and the said Samuel Poteet then and there executed to him the receipt dated July 22nd 1895, above referred to, and filed herewith, as exhibit "A".

At the time your orator purchased said tract of land, the said Samuel Poteet pointed out the boundaries thereof, and claimed that said ~~land~~ boundary would contain from 125 to 150 acres, but the sale was one by the boundary and not by the acre. And at said time, to wit, at the time of said sale, the said Samuel Poteet directed your orator to procure a surveyor and have said land surveyed accurately when he would make the deed conveying the same to your orator.

Your orator did procure a surveyor, pursuant to said request, to survey said land, and he files herewith as a part hereof marked "E" the plat and survey of the same.

Then by agreement between your orator said plat and survey was delivered to Capt. H. C. Joslyn, who was to prepare the deed, in accordance with said plat and survey, but the said Samuel Poteet afterwards refused to make the same, and on various occasions since said survey was made ~~respondent~~ your orator has applied to him to execute said deed, but he has neglected to do so and he now positively refuses to make said deed in accordance with his said contract.

Your orator will further show your honor that the said Samuel Poteet retained the crop that was growing on said land at the time of the sale to your orator, and as soon as that crop came off, which was in November 1895, the said Samuel delivered the possession to your orator, and your orator has been in the possession thereof ever since. And since his purchase he has made considerable and valuable improvements on the same by clearing and cleaning up the land, and sowing thereon grass-seed costing about \$20.00 in cash.

Now the object of this bill is to have specific execution of said contract, and to compel the said Samuel Poteet to convey said land to him by good and sufficient deed. And being without adequate remedy at law, he prays your honor's court of chancery to take cognizance of his cause, and grant him the proper relief.

To this end he makes Samuel Poteet the party defendant to this bill, and prays that he be required to answer the same, but he need not do so under oath, as that is expressly waived; and upon a final hearing, he prays that the said Samuel Poteet be compelled to convey said land to him with covenants of general warranty &c. Your orator prays for full general relief, and as in duty bound, your orator will ever pray &c.

Samuel T. Hyatt,

For plaintiff.

Received of S. B. Poter nine hundred
dollars payment in full for the draft
or parcel of land sold by me to him.
This the 22. day of July 1895.

Teste
C. T. Humeau.

Samuel Poter

"A"

Field Notes for S. B. Pollock

Beginning on a Marked Cedar Sam Pollock
Mr Sullivan + Mr M Green with
Smeens lines S. $9\frac{1}{2}$ E 86 poles to a White oak
(now gone) N 59° E 20 poles S 76° E $19\frac{1}{2}$ poles
S $1\frac{1}{2}$ E 12 poles S $14\frac{1}{2}$ E 12 poles S $31\frac{1}{2}$ E 15 poles S $45\frac{1}{2}$ E
26 poles to the top of Wallers Ridge and with
the same at $66\frac{1}{2}$ E 6 poles S $83\frac{1}{2}$ E 40 poles to a Dog
woods Hence leaving Smeens line N 28° E $44\frac{1}{2}$
poles to a large Spruce root + Double Dog wood
at 60° E 20 poles to a small Black oak on a
bluff of rocks on the upper side of the road
thence with the Road N 27° W $6\frac{1}{2}$ poles N 13° W
 $29\frac{1}{2}$ poles. N 18° W $12\frac{1}{2}$ N 8° W 11 poles N 20° W
 $31\frac{1}{2}$ poles N 48° W $7\frac{1}{2}$ poles N $67\frac{1}{2}$ W 16 poles
N 87° W $28\frac{1}{2}$ poles N $29\frac{1}{2}$ W 12 poles N 12° E
 $7\frac{1}{2}$ poles to a Cedar + Pin oak on West side
of the Road S 86° W 86 poles to B.

Samuel Patut & Sonah Patut
to Samuel B. Patut,
Consideration \$1600.00 in
hand for

W. B. Patut
for the sale
of the
W. B. Patut
of the
Hoffman
and
Brewers

W



Worked

Cedar.

Pine Oak & Cedar.

100 A.

Whiteoak

Public

Road

E

Small Blackoak

Spanishoak &
Double Dogwood.

2 Dogwoods

Wallens. Ridge.

S. B. Potter

To { Plat of Land.
1895

"B"

Plffs Costs
 Clerk 4.13
 Tax 1.50
 Shoff 2.20
 J.P. 7.50
 witnesses 3.00

 \$18.33

 Saml B. Poteet.

vs $\frac{1}{2}$ Chy. Bill

 Samuel Poteet

 Duncan & Hyatt
 P.G.

 1896 1st May rules bill
 filed & pa & d & d & d

" 2nd May rules & d & d
 confd & cause set
 for hearing.

" June Term Contd

" Nov Term Contd

1897 March Term Contd

" June 7 Decree final
 See Chy O B P P 561

To the Hon. W. J. Miller Judge of
The Circuit Court of Lee County, Va.
The Answer of Samuel
Patet, to a bill filed in this
Hon. Court against him by his
son Samuel B. Patet -

Respondent says it is true
he got the sum of \$900.⁰⁰ from
the plff and executed the receipt
filed with the plffs bill, and that
he sold the plff a boundary of
land to pay him for the same,
and gave him up the possession
thereof. But it is not true
that he refused to make a deed
therefor according to the Contract
but upon the contrary has ever
been willing to do so.

At the time of this sale, this re-
spondent pointed out to his son
the land he proposed to sell him
and which he had always rated
at a much higher price than he
priced it to his son the plff, the
land is very fertile and fine and
the boundary so sold was about 80
acres and ran in a straight line
from the foot of Walden's ridge to

the top of the same and embraced all the land of this respondent from that line down to Wm Green's line, that is about 80 acres on the west side of the plat filed by the plff. and the line thus laid off on said land would leave the main road on said plat at point not far from the word "Public" & run thence straight to the top of the ridge.

Now the land to the east of that line was never sold to the plff at all. But this respondent said at the time of said sale, to his son the plff, that the land east of said line around the road, would be about the part he would on the death of respondent be entitled to as part of respondent's estate, and this respondent proposed that when a deed was made to the land sold he would also deed this piece without consideration, but in doing so he would reserve the use for respondent's life of the blue grass pasture thereon, the deed was not then made. In a short time thereafter

it became apparent this respondent was likely to be greatly embarrassed and financially distressed by reason of his security liabilities for one Wm Green, and he is still threatened from this direction, owing to this and the fact that if so held liable he would have to sell other land to meet his liabilities, he appealed to his son the plff, to release him from the conveyance of the gift, but he found him inexorable, he pointed out to him if he conveyed away this piece that it would take his respondent home to meet his other liabilities and he would thus be turned out of a home old & unable to again procure one but the plff insisted on respondent's promise to convey the whole hereditary, and he then agreed to do so reserving the use of said pasture for his natural life, this did the plff refuse, and denied the contract and respondent did & has and will continue to make any other deed until directed by this Hon. Court to do so. This respondent never had said survey made, and never made sale

The land therein embraced, and the plff has appealed to the law to enforce his right. This respondent invokes that same law for his protection.

And he is advised that his promise to convey the land, not sold or embraced in the plff's purchase, not being in writing and without consideration is a nudum pactum and void in law, and this principle he here asserts as his panoply & shield. The land sold & taken, paid for he is and has all the time been willing to convey, but the plff would not have it.

This respondent claims that he ever gave up the possession of the land not sold, that is the piece proposed to be given, and on which the blue grass pasture is, but he did give up the other & the plff now has it & respondent is willing to convey it. The two pieces however is embraced by an outside fence with different fields separately enclosed. Respondent claims therefore that he sold the boundary claimed

by the plff, and covered by his survey, but only sold the strip referred to and promised to convey the other with the reservation mentioned; He denies that he is legally bound to convey the piece not sold and hereby claims exemption therefrom, as not binding in law. He denies each and every allegation of the plff, be it not herein specifically admitted or denied, and which is not in harmony with the details herein set out. And having now answered he prays to be dismissed with his costs.

Pridemore & Sewell.

Samuel Patet.

acts & Answer.

Samuel B. Patet.

Filed in open Court
agreed by leave thereof
June the 3rd 1896

A B Munsey Clerk

The depositions of Martin Collins S. B. Poteet.

_____ taken pursuant to notice hereto attached, before me, H.C. Joslyn, one of the justices in and for Lee County, on the 8th day of August 1896, at the Law office of Duncan & Hyatt, in the town of Joneville Va. Which depositions are intended to be read as evidence in behalf of the plaintiff in a suit in chancery now pending in the circuit court of Lee County Va. in which Samuel B. Poteet is plaintiff and Samuel Poteet is defendant
Presents S. B. Poteet - Plaintiff and his counsel

" Samuel Poteet - Defendant and his counsel.

--- Samuel B. Poteet a witness of lawful age being first duly sworn deposes and says:

Ques. 1. Please state all about the purchase by you from your father, of the land referred to ⁱⁿ ~~the~~ the bill in this case, and in doing so give the boundary purchased?

Answer My father proposed to me, that he would deed me a certain boundary of land, for a certain sum of money. The same land that is covered by a plat made C. C. Ellist. filed with the bill, and marked "B". My father had owed me \$300.00 for several years, and he told me if I ~~would~~ furnish him \$600.00 more he would deed me the above mentioned tract of land. I furnished him the \$600.00 making in all \$900.00

Ques. 2. Who procured to be made the survey, a plat of which is filed with the bill, marked, "B" and referred to by you, in your answer above?

Ans. 2 Did,

3 Does That survey embrace the land purchased by you from your father. And in this connection state whether or not any of the land embraced in said plat was reserved or if there were any conditions connected with it.

Answer It does exactly, he made the lines himself. There was no conditions ^{or reservation} in it. Except he was to have the growing crop of 1895.

4 Please state whether possession was delivered to you, ~~if so when~~, of said land, and if so when.

Ans. I was to have possession when the growing crop of 1895 was taken off, and when the crop was taken off, I took possession and went to work on the land and no objection was made by my father, and I have had

possession ever since, and have
had everything done on it that
was done and paid for the
same, and My Father has
stood by and seen the work
going on and never objected
to it. I have operated on all
parts of the land pretty much,
ever examined.

Quest. Is not a large amount of the
tract in woodland, if so
what have you done on that?

Ans. There is but a small quantity
in woodland. The majority of it
is in Cultivation. I have had
~~some~~ ^{one} of the thickets cleaned up.
In the woodland proper I have
only changed and repaired
some of the fences around it.
I have cut some timber on the
Cedar hill.

2 When your father proposed, to sell
you a certain boundary of land
did he not designate, a boundary
to you & price it, at the \$900⁰⁰, and
then say he would advance you
an other piece valued by him
at \$700⁰⁰ and which lies to the east-
ward of the one priced at \$900.00 -

Answer. Not a Syllable of it is true,

3 Was there nothing said by him to you re the track nor in the talk leading up to the track, about, his giving \$700. or any other sum as a gift - State anything that was said about that matter?

Ans. He did claim that the land was worth more than 2 was paying him for it. There was nothing said about any advancements.

Re examined

What particular work, if any, have you done on that particular part of the land inside of said survey which your father now claims he did not sell you?

Answer 2 Changed a string of fence, to throw about one acre of grass that was enclosed in a new-ground field, to a pasture, And further this deponent with not,

A B Poteet

Martha Collins another witness being duly sworn testifies as follows.

1 What is your age and where do you

live, a

Ans. I am 20 years of age, I live on the lands of S. B. Potteet, 2 Did Samuel Potteet father of S. B. Potteet ever tell you anything about the land sold by his son, if so please state what he told you, about it?

Ans. Just after Little Sam Potteet bought the land, I ^{was} working Samuel Potteet how he sold to Little Sam. The land, and he told me he ^{commenced} on the Cedars between Greene & Geo Sullivan and himself, running with the Greene line to the top of the ridge, then to what is called the Pendergrass farm, and with the Pendergrass farm to the big road, and with the big road to the high ground and with the high ground to the beginning

3 Did you assist Mr Elliott in making the survey for Samuel B. Potteet, if so what did you do?

Ans. I did assist him. I went before and carried the chain.

4 Now please state if the survey thus made by Elliott, is the same land

and lines which Samuel Potteet told you he had sold to his son Samuel B Potteet.

Ans. Yes Sir,

5 Are you not cultivating some of the land inside of said boundary if so where is said land situated inside of said boundary,

Ans. I am cultivating some of the land, and it is situated on the east end, ~~on~~ what is called the Bendergrass new ground.

6 If Mr. Potteet ~~at~~ any time said anything to you about the rents of the said land what did he say?

Ans. One evening when Mr Samuel Potteet and myself were coming from a working at the Bendergrass we were talking about what a fine chance for Corn ^{There was} on the Bendergrass new ground, and he told me he must have the rent off of it, for this year, I asked him if he had it in the Contract when he let little Sam Potteet have the land, and he said no Sir but he must have the rent for this year.

7 Is this piece of land called by you the Pondergrass new ground inside of the survey made by Elliott when you carried the chain?

Ans. Yes Sir it is.

Cross Examined.

Quest. 1 Where did you live in the year 1895?

Ans. To the best of my recollection we were living on Samuel Patet's land.

2 When did you have the conversation, you say you had with Samuel Patet, first spoken of by you?

Ans. It was in 1895.

3 What time of that year?

Ans. It was in the fall. It seems to me it was in August.

4 About a year ago did I understand you?

Ans. Yes Sir;

5 What were you doing that day?

Ans. I don't recollect what we were doing. we were at his barn and it don't seem to me that we were doing anything

6 you say Samuel Pateet Told you he sold the land, you describe, did he say anything about the blue grass pasture?

Ans. No Sir he did not. Not in that time of talking he didnt.

7 Well did at any time if so what did he say?

Ans. I never heard him say anything about the blue grass land until this dispute got up. he said one morning at our house. after this dispute got up. that it was his blue grass land.

8 When did Samuel B. Pateet purchase this land?

Ans. It seems to me like it was the last of July 1895.

9 Are you going to move away if so when where to?

Ans. Not as I know of.

10 What other trades or dealings, or matters of business has Samuel Pateet ever told you about of his matter?

Answer. I dont recollect of any other, except his horse trades with Little

Sam, he told me about selling the horses to little Sam, and about letting him have horses to trade for cattle.

11 Did you ever tell Samuel B. Pateet what his father said about the land trade if so when & where did you first tell him?

Ans. Yes sir. I told him what his father said about it. I don't remember where nor when it was.

12 How long was it after Samuel Pateet told you, till you told Samuel B. Pateet, give the time as near as you can?

Ans. I expect it was five or six months before I told him about it.

13 How did you happen to tell him about it then?

Ans. He asked me if I ever heard his father say anything about the land, and I told him.

14 State Samuel B. Pateet's words as near as you can that he used when he asked you, and where was it?

Ans. It seems to me that we were going over the land looking at it, and he just asked me if

I ever heard his father say anything about the land, and I told him

15 What was your Samuel B. Pattee going over & looking at the land for?

Ans. We were just going about over it looking at the grass.

16 What time of the year was it that you was then going over it looking at the grass?

Ans. It dont seem to me, that were looking at the grass. it was earlier than that, I dont remember what we were going over it for then.

17 Well was it warm or cold weather when you was going over it?

Ans. It dont seem to me that it was very warm, and it wasnt so very cold, when we were going over it.

18 Please tell me, at thine you told Samuel B. Pattee what his father said about the sale of the land, as you was going over the land, was it, Spring summer fall or winter?

Ans. I cannot remember exactly. it seems to me like it was the last of the winter or the first of the spring.

19 What winter, and what spring, last winter & last spring or last winter & spring a year ago?

Ans. It was this last spring that is past.

20 Now please state as near as you can what month it was?

Ans. It must have been along about January or February. I don't recollect just what month it was in.

21 Then when you said you were going over, the farm looking at the grass at the time, you were mistaken were you not?

Ans. Yes sir. I was mistaken about that.

22 Then if you would be mistaken about that, might you not be mistaken as to what Mr Sam Pattee said?

Ans. No sir. I don't think I was.

23 Please state just, what Sam Pattee said when he told you about the

trade, use his words exactly as he used them, giving his words and your own repeat them exactly if you can?

Ans. I just asked him what land he sold to Sam. did he sell the whole Pendergoss farm and all on that side of the road. running with the road. he said he did not. He said he sold to him commencing in the corner between himself Geo Sullivan and Bill Green and running to the top of the ridge. across to what is called the Pendergoss farm, and running with the Pendergoss farm to the road, and running with the road to the high ground, and back to the corner.

24 Did he say whether there was any writing or not about the track?

Ans. No Sir. he did not.

25. You say after Samuel Pateet told you some four or five months afterward, you told Samuel B. B. Pateet. I suppose you had thought the matter over after during that time?

Ans. No Sir. I had not studied much about it. I was not interested in it.

26 What else did you and Samuel Pateet talk about at the barn that day, tell over all that he said & that you said?

Ans. We were talking about some renting to Sextons and letting them live there, and about Sexton burning rails. I don't recollect of anything else that we talked about.

27 Did Sexton's live there at the time?

Ans. Yes Sir. They did.

28 When did Sexton's leave?

Ans. He left in January 1896.

29 Then it was in January 1896 or ~~before~~ ^{after} that the conversation took place between you & Samuel Pateet at the barn?

Ans. It was before that time. it was along the last of July or the first of August, when we were talking.

30 Who lives in the house where Sexton then lived?

Ans. My father Reynolds Collins and I live there with him. we moved

there in January.

31 Where did you live before you moved to that house? in what house?

Ans. We lived in Samuel Potets house on the river.

And further this deponent soith not.

Witness claims

Martin ^{his} Collins
~~Martin~~

1 day 50 cts.

Reynolds Collins another witness of lawful age being duly sworn deposes and says.

1. What is your age and where do you live.

Ans. I am about 53 years of age
I live on S. B. Potets land in Lee County Va.

2. If Mr. Samuel Potet ever told you anything about a sale of land made by him to his son, Samuel B. Potet, please tell what he said about it?

Ans. I dont know as he said anything about selling, I asked him one day what boundary of land he had let S. B. Potet have, and he told me he had let him have the boundary around with Greener's land to the top of the

ridge. Then down with the Pander-
gross farm to the road, and around
with the road, to a little cliff
above his grocery on the side of
the road, and from there splitting
the Cedar Hill and on to the
Sullivan and Greene Corner. The
line from the cliff to the Sullivan
and Greene Corner, runs down
on the side of the hill, on
the side next to my house.
That is on the south side of
the Cedar Hill.

3. Was you present when Mr Elliott
made the survey for Samuel B
Potter, and if so did you in any
way aid in making said survey?

Ans. I was not present, and did not
aid in it any way.

4. Do you know where Elliott ran
the line from the cliff above the
grocery to the Sullivan & Greene
corner.

Ans. I partly know where said line
is. Mr Samuel Potter showed me
from the Chingnapin and Cedar Corner
to back to Greene, Sullivan and
Potter's Corner. That is the line
running on the South Side of Cedar Knob

5 Please state whether or not that line runs at or about the place where Mr Poter told you he had sold to,

Ans. This is the same line that Mr Poter told me he had let S. B. Poter have to.

6 Are you cultivating any land inside of the boundary above described by you, if so who did you rent from.

Ans. Yes Sir. I am Cultivating some. I rented it from S. B. Poter.

7 Whereabouts in said boundary is the land you are cultivating?

Ans. It is on the east end of the disputed land as I understand it, it is what is known as the Pendergoss New ground.

8 Does the new ground which you are cultivating run to the road if not how close does it run to it and in this connection state whether your new ground runs to the east line of the land claimed by Sam B Poter?

Ans. There is spots of it that comes close to the road. on the upper end. lower down there is a strip of woods

between the new ground and the ~~road~~ ^{road}, the new ground runs to the east end of the land claimed by S. B. Potteet.

9 Did Samuel Potteet ever raise any objection to your cultivating this land.

Ans. He never did to me.

Veras Examined

Just 1 Do you cultivate any part of what is known as the blue grass pasture land?

Ans. No I do not.

2 Has not Samuel Potteet got a potatoe patch inside the field you cultivate a part of, and does he not use the land when he chooses to do so?

Ans. He has a potatoe patch inside my Cornfield, planted by Aunt Sallie Potteet wife of Samuel Potteet. And further this deponent soith not.

Witness claims

Reynolds ^{his} Collins
mark

1 day 50.cts

The further taking of depositions in this case is adjourned until further notice.

This August 8th 1896.

H. C. Forsgren Jr R

The depositions of John B. Pendergraft
and others taken before me H.C. Jos-
lyn ^{a Justice of the Peace} at the Office of Duncan & Hyatt
in the Town of Jonesville on the
29th day of October 1896, pursuant
to agreement of Counsel heretofore
made, to be read as evidence
in behalf of Samuel B. Poteet in
a suit in chancery pending in
the Circuit Court of Lee County
wherein Samuel Poteet is plaintiff
and Samuel Poteet is defendant.

Present: - Plaintiff in person and
by L. T. Hyatt, of counsel.

Defendant in person and
by D. C. Sewell, of counsel.

The ~~defendant~~ witness John B.
Pendergraft, being duly sworn,
deposes and says:

Ques. 1. for plaintiff: - State your
age and residence

Ans.

I am 39 years of age, and
live in Lee County Va on
Wallens Ridge.

Ques 2. - Some time ago did you
lease a piece of land from
Samuel Poteet? If so when

and what was the contract?

Ans.

I did lease a piece of land from Samuel Potteet in 1st year 1895. to the best of my recollection that was the year. The contract was, that I was to have one Crop for Clearing the land off.

Ques

State whether or not you were also to have the privilege of renting said land for a longer period of time if you desired to do so?

Ans.

I don't think I had any contract to that effect. There was something said about it, but there was no contract.

Ques.

After your lease expired state whether or not the land so leased by you was sold by the said Samuel Potteet to his son, Samuel B. Potteet?

Ans

I don't know anything about the sale of it. Sometime after I learned that Samuel B. Potteet had that land. I met Samuel Potteet and I asked him something about the renting of that same new ground. and his answer was that Samuel B. Potteet wanted to

rent the land to some man
that ^{he} would furnish the stock
and wanted half the crop.

Ques.

State whether or not said new
ground is in the boundary laid
down on the plat I hand you
if so ~~or~~ in what part?

Ans.

The new ground is in the
boundary laid down in the
Plat. and on the South-east
end of the Plat.

Ques.

State whether or not said new
ground or any part thereof is east
of a line beginning at about the
word "public" on said plat and
running straight to the top of Wal-
len Ridge?

Ans.

If you run a due South Course
I think it would throw the
new ground on the west. That
is my opinion about it.

Ques.

How near does the new ground
come to the road?

Ans.

The new ground comes to within
about 200 yards of the road,
at the nearest point. and at
the furthest point, it is about
400 yards from the road.
That is my judgment on it.

And further this deponent soith not.
Witness claims T. B. Poteet
1 day 50-

Ques 1 H. C. Joslyn, another witness of
lawful age deposes as follows:
State all you know about
The sale of land by Samuel Po-
teet to Samuel B. Poteet. Did
they or either of them employ
you to write a deed of con-
veyance for same? State all
that Samuel Poteet, to you in
regard to the matter; also
any conversation had by both
parties in your presence?

Ans. About the time or perhaps a
little after the survey of this
land had been made Samuel
B. Poteet asked me to write
a deed to this land and go
to his father's house, and
have it signed by his father
and mother and take their
acknowledgments to it, I agreed
to do so, and some time after
Mr C. C. Elliott handed me
the Plat, and a copy of his
field notes. Showing the corners

Courses &c. In a short time
I saw both Samuel B. Poter
and his father Samuel Poter
together in Jonesville, and
we talked about the deed. Mr
Samuel Poter seemed to be
willing to make the deed. but
said the calls were not exactly
right, and that we would
hunt up his deeds. or ex-
amine the deed book and
he would point out to me
exactly where the line was
and would assist me in
getting the calls correct. We
met on one, or, perhaps on
two other occasions and we
had a talk about the deed
but I never wrote it, we
set one or two times to meet
and fix up the deed. but never
got together about the matter.

Ques

In any of these conversations,
I mean any of the first ones,
did Samuel Poter ever tell you
that there was to be a reserva-
tion of pasture or anything of

that kind?

Ans. There was nothing of that kind mentioned in any of our conversations,
And further this deponent doth not,
O. C. Foslyn

~~The~~ Thomas J. Ely, another witness of lawful age, deposes as follows:

Ques. 1.- If at your house you ever had a conversation with Samuel Potteet concerning a sale of land to his son Samuel B. Potteet, state what was said?

Ans. I think it was last Summer, at my house. Samuel Potteet told me he had sold Samuel B. Potteet a piece of land, on the south side of the road, and that he had paid off the debt that I was security for him on. on some forthcoming bonds. I asked him if he had not sold himself too short, of land in his old days, and he said No, he had plenty of land left, to do him,

Ques.

Did he ~~is~~ or not in that conversation describe the boundary sold by him to his son? If so state them

Ans.

Nothing only that on the south side of the road, it is the road that runs from Potets Ford, across the ridge,

And further this deponent with not.

Witness claims

Thomas J. Ely

3 days \$1.50

Virginia Lee County To wit:

I, Henry C. Joslyn a Justice of the Peace for the said County do, hereby Certify that the foregoing depositions of S. B. Potets, Martin Collins, Reynolds Collins, John B. Pendegrass, and Thomas J. Ely, were duly taken, sworn to and subscribed before me, at the time and place mentioned in the Caption of the same, signed under my hand this 29th day of October 1896,

H. C. Joslyn J. P.

Virginia Lee County To wit:

D. D. C. Sewell a Notary Public

For the County of Lee in the
said State, do hereby Certify that
the foregoing deposition of
H. C. Joslyn, was duly taken,
Sworn to and Subscribed before
me, at the time and place
mentioned in the Caption of
the same. Given under
my hand this 29th day of
October 1896.

D. C. Sewell
Notary Public.

Samuel B. Poter
v.s. } In Chex
Samuel Poter

The depositions of
S. B. Poter
Martin Collins
Reynolds Collins
John B. Pendergrass
Thos. J. Ely +
H. C. Joslyn

Received from H. C. Joslyn
the J. P. before whom taken
and filed Oct 30th
1896 A. B. Murray Clk

Costs.
Sheriff \$ 1.70
witnesses \$ 3.00
J. P. \$ 4.50

To Samuel Poteet:

You will please take notice that on Saturday, August 8th 1896, at the Law Office of Duncan & Hyatt, in the Town of Jonesville, Va., I will proceed to take the depositions of H.C. Joslyn, C.C. Elliott, T.J. Ely and others, which depositions, when taken, are intended to be read as evidence in my behalf in a certain suit in chancery now pending in the Circuit Court of Lee County, Virginia, wherein I am plaintiff and you ~~are~~ are defendant. And if from any cause the taking of said depositions be not begun, or, if begun, be not completed on that day, the taking thereof will be adjourned from day to day, from time to time, and from place to place until the same shall be concluded. This Aug. 3rd. 1896.

Samuel B. Poteet

By Counsel.

Duncan & Hyatt

Counsel.

Samuel B. Poteet

vs. $\frac{3}{2}$ In Chaucery.

Samuel Poteet.

Notice to take dep-
ositions. on Aug. 8, '96.

Executed Aug. 4th 1896.
by delivering a true
copy of the within
summons to Samuel
Poteet, this August 7th
1896.

Jas. M. Weston.

Virginia Lee County to wit:
This day personally appear-
ed before me A. B. Munsey
Clerk of the Circuit Court
for Lee County James M.
Weston and made oath
that he delivered a copy
of the within to Samuel
Poteet on the 7th day of Aug. 1896
August 1896

A. B. Munsey Clerk

Samuel Potteet

~~Ado~~

} In Chancery

Samuel B. Potteet

This depositions of Samuel Potteet

taken pursuant to agreement
at the office of S. C. Sewell
in the town of Jonesville Va
on the 25th day of Feby 1897.
to be read as evidence on
behalf of the defendant, in
a certain suit in Chancery now
pending in the Circuit Court
of Lee County Virginia in which
S. B. Potteet is plaintiff and
Samuel Potteet is defendant.
Present, the Plaintiff and
C. T. Duncan his attorney, and
the defendant and S. C. Sewell
his attorney.

Samuel Potteet, a witness of
lawful age being duly sworn
deposes and says,

Ques 1 If you ever sold to your
son, Samuel B Potteet, the land
mentioned in the plaintiffs Bill or
any part thereof, please state your
Contract with reference thereto, the
boundary and all about it?

Ans. I sold him a part of it, on the
west end. I sold him, on the
west end of my place, running
from a little ~~North~~ of my
granery, a corner, with the big

on a little rocky knoll, a Cedar
and Chinguepin Oak, with the
Big road opposite the granery,
to a Cross fence, and with
the Cross fence, until it struck
the hollow and a branch, and
with the hollow to the top of
the ridge, I sold him the
boundary of land ^{west of this line} for the
sum of \$900.00, \$300.00 that
I owed him, and \$600.00 that
he paid me, I told him
when I sold him this, I would
give him ^{the balance of the land} on the south
of the road, ~~to the top of the~~
~~ridge, and part of this line~~ to the red hill, or the
narrows, as some people call
it, and rate it to him at
\$700.00 as an advancement,
as far as it would go on
his part in my estate, and
I reserved the blue grass pasture
on the part I gave him, during
my life, or until I should
leave and move away from
there from any cause.

Question 2 - Was the agreement to give or
advance him this strip of land
in writing, or ever reduced to
writing?

Ans. It was not in writing, it was
just verbal.

Question 3 - Since promising to give this
part of your land, have you

discovered that you would perhaps be liable for any bonds or indebtedness. If so state about it?

Ans. Since this promise, I have been informed, that there is likely to some large ^{Security} bonds to come against me, and I went to my son S. B. Poter, and tried to get him to release the gift port, fearing if I let that go, they would sell me out of house and home. I owe some other debt also.

Ques 4. Were you present, or did you have anything to do with the survey made by L. B. Elliott, and filed with the Plaintiffs bill?

Ans. I was on Blockwater at the time and had nothing to do with that survey.

Quest-5. Have you ever given S. B. Poter or any one else for him possession of the strip of land you told him you would give him as an advancement or have you continued to pasture over it as you always have?

Ans. I have never given him possession of it - but have used it right along, the same as I always did.

Quest 6. When you applied to S. B. Poter to release you from the gift port did he refuse or agree to do so?

Ans. He refused to release me.

~~Ques 7. What he refused to please you
from deciding the whole track
and you or not agree to deed
the whole track according~~

Ques 7. What is the land sold to
your son, S. B. Potch, that is, the
part on the west of the line
you described, worth?

Objected to because immaterial

Duncan for Plff

Ans. I always rated it at \$1000.⁰⁰

Ques 8. What is the whole track reasonably
worth, that is, the part you sold
him & the part you told him
you would give him?

Ans. I rated it at \$1700.⁰⁰ or \$1800.⁰⁰
Somewhere along there.

Ques 9. Is it not a fact that you
were offered \$1400.⁰⁰ for it just
a few days before your trade
with your son. If so state
who by?

Objected to because immaterial
and irrelevant. and leading

Duncan for Plff.

Since the above question is objected to
because leading, I will ask you
to please state whether or not you
were offered any sum for this
track of land just a few days be-
fore your trade with S. B. Potch, if
so what amount & by whom?

Objected as above.

Duncan for Plff.

Aus. A few days before that, I was offered \$1400.⁰⁰ for it, by S. C. Sewell.

Ans. 10 Please state whether or not you ever had any conversation with Martin Collins about this trade with your son, S. B. Poter, if so state when, where it was & what was said?

Aus. 8 I never did have any conversation with him about that trade, in my life.

Ques. 11. Please state whether or not, you have not always been ready and willing, to convey by proper deed to your son S. B. Poter, this land according to your contract.

Aus. 16 Yes Sir. I have always been ready and willing.

X examined

1. 19 What was the contract between you and your son S. B. Poter?

Aus. 21 I sold him the part on the west end up to the line I have just described for \$900.⁰⁰ from there on up to the red hill, ^{and} south of the road, and east of that line. I gave him, and told him it could go in at \$700.⁰⁰ out of his part of my estate, and excepted the gross off of a certain Blue grass pasture.

2. 30 Were you to convey all said land inside of said boundary to S. B. Poter.

Aus. 32 Yes, with the understanding that \$700.⁰⁰ ^{put in as} was a gift, and the blue grass pasture

excepted.

3 How much land is there west of the line described by you, sold to your son.

Ans. 3 I don't know.

4 Give me your best impression of the amount?

Ans. 6 According to what they say there is in the whole, I would guess there is 60 or 65 acres of it.

5 Do you not in your answer, filed in this cause state that the boundary sold to your son contains about 80 acres.

Ans. 11 I don't recollect about that.

6 Do you not state in your answer that you sold to your son part of a straight line run from about the word "public" on the plot filed with the bill to the top of the ridge? And is the line which you have described in your deposition to day a straight line?

Ans. 20 The line I have described to day is not entirely a straight line, and the answer will show for itself.

7 On the land west of the line which you have to day described, please state whether or not your son has, ~~ever~~ ever controlled and occupied the same since 1895. State how this is?

Ans. 29 Yes Sir he just went to work on it, and has occupied some of it all the time. I also occupied it, and he has used the blue grass the same as he did before the

trade was made, no more
and no less. I mean to say
that he has exercised no more
authority than he did before,
over it.

The further taking of depositions
in this case is adjourned until
tomorrow Feby 26th 1897. at the
same place.

This Feby 25th 1897.

H. C. Foslyn J. P.

Met pursuant to adjournment. Present
the same parties and their counsel as
on yesterday. This Feby 26th 1897

H. C. Foslyn J. P.

Samuel Patut being recalled further to
find an cross-examination as follows.
8. Has not your son Samuel since the trade
between you and him, made permanent im-
provements on the eastern end of said land
such as clearing it up, sowing, grass seed
on it &c State all about it?

Ans. No Sir. he has cut a few briars
shrubs &c. two or three days. That
is all I know of, or have seen.
I believe he sowed an acre or two
of grass on the land.

9. You say that D. C. Swell offered to
purchase said land from you at
one time. State when that was & give the
boundaries of the land he proposed to
purchase?

Ans. It was the same identical land shown on the plat filed in this Cause, and was just a few days before I made the trade with S. P. Poter.

10. How much land is there in the Blue Grass pasture spoken of by you. Give your best estimate?

Ans. I suppose there is 8 or 10 acres of it, not over ten.

11. How have you used any of said land east of the line described by you on yesterday, since the sale by you to your son, except to pasture some stock on the blue grass pasture, if so state what part of it you have used and what you have used it for?

Ans. Yes Sir, I have used the field we call the rock fence field, on the right of the road beyond the grocery said to be 8 acres. Year before last I had corn on it, and last year I had it in wheat, I used all of it I wanted to.

12. Did you not have that field in corn, when you sold to him, and was it not a part of your contract that you should have the crop then growing on said farm, and did you not then sow it in wheat before the corn crop was taken off?

Ans. I tendered it that year. There was nothing said in the contract about the crop, after I gathered the corn and pastured it, I sowed it in wheat. I don't recollect whether it was

13 Planted when we trodled or not.
Did you cultivate any part of the land west
of that line for the year 1895?

Ans. There was only one field cultivated
west of that line, that I remember
of, and I do not remember now
who cultivated that. I know that
I did not cultivate it.

14 He received the rents of that field west of
said line for the year 1895?

Ans. My recollection is that I did.

15 How come you to receive said rents?
Ans. Just because I had rented the fields
and I got the rents.

16 ~~Did~~ you sell the land before or after you
rented it?

Ans. I don't recollect.

17 Then if you sold it before you rented it, why
did you receive the rents?

Ans. I don't know why, just because I
had rented the land, and got the
rents, when I rent a piece of
land I always expect the rent
off of it.

18 You don't expect the rents off it, unless
it is your land do you?

Ans. It is owing to circumstances about
that.

19 What circumstances?

Ans. I don't know what, just Circumstances
of any kind, as you please to call them.

20 How was it not a part of your own
Tract that you were to have the rents
and crops of all of said land for the
year 1895?

Ans. No Sir?

21. Then was your son to have said crops or rents or any part of them, if so state what crops rents or parts thereof he was to have?

Ans. He was to have none, that I know of.

22. Does the plat filed by the plaintiff with his bill correctly describe ^{boundaries of the} the land you were to convey to your son S.B. Poter.

Ans. I dont know, I was not along when it was run, but I suppose it does, I know it includes the land I sold him, and I suppose it includes the land I was to give him.

23. Has not your son Samuel B Poter, in addition to the acres or so which you state above that he had sowed in grass sowed the field you call the rock fence field in Blue Grass and clover, Did you see him do it?

Ans. He sowed the two acre piece, I spoke of above, but I dont know whether he sowed the rest or not.

24. You state above that, S.B. Poter cultivated your land, whenever he pleased, Did he not pay you rents, for the land cultivated after he became of age?

Ans. He did Cultivate my land, when and where he pleased, and never paid me any rent for the same.

25. How long has your son been married and has he cultivated any of it since since he was married? for what he

paid you ~~no~~ rent, if ~~ex~~ state what year
and what field or fields?

Ans. I don't know how long he has been
married. I suppose five or six years.
I don't recollect whether or not he
has cultivated any of my land since
he was married ~~or not~~. For which
he paid me no rent, he has
pastured some before and since
he was married, he has pastured
some every year since he was
married. For which he paid nothing.

26. When did you get from your son the \$300.00
which you say you owed him at the time
of said land trade? State as nearly as you can?

Ans. Objected to because immaterial,
D. C. Sewell for deft.

Ans. It was three or four years before
this land trade was made. I
don't recollect, it might have
been longer.

27. Was it not 3 or 4 years before your son was
married?

Ans. I don't recollect, whether it was
before or after he was married.
— Re-examined —

Quest. Have you ever given S. B. Potech
possession of the strip of land you
told him you would give him or
has ~~the~~ acts he has done on it been
without authority?

Ans. I did not deliver him possession
of it, and his acts have been
without my authority.

Ques. Before the bringing of this suit &
when he refused to release you
from conveying the past you
told him you would give him
did you or not over to convey him
the whole boundary only reserving
the pasture you have spoken about?

Ans. I did. I told him I would do
it, rather than have a law suit.

Ques. On yesterday while taking your
deposition & in the presence of the
Justice H.C. Joly, C. Y. Duncanson & W.C.
Snell, please state whether or not
you Lord D. B. Poterick say, that
he told you when the trade was
made that he would pasture your
stock for nothing & that ^{he} expected
to pasture them for nothing or words
to that effect?

Ans. He said it,

Ques. Have you not now just heard
him say, that he does not deny
that / that is what is stated in
above question?

Ans. Yes, he now says he said it, and
does not deny it.

Ques. ~~Is the Lord you spoke of~~
~~yesterday as "liable to come against~~
~~you" ~~stated~~ ~~oustaining~~ & threatening to~~
~~come against you?~~

Ques. Was the trade ~~made~~ ~~about~~ this land
made at the time the receipt
filed with the plaintiffs Bill ~~was~~
given or was it before?

Ans. I think the trade was made, some-
time before the receipt was given - but
I don't recollect positively.

Re, Cross-examined,

By the contract as you have stated it, be-
tween your son and yourself was not
your son to have possession of all
said land except the blue grass
field?

Ans. I don't think there was any agreement
about that.

Q Did you reserve any of it except the blue
grass field?

Ans. I don't recollect that I did.

Q Where and when did you offer to convey said
land, to your son, reserving the blue grass
pasture, and who was present?

Ans. I don't recollect the time - but it
was before the suit was brought.
S. B. Poter and myself were in the
road between New Hope Church
and my gate, when this talk
came up. There was no one present
except S. B. Poter and myself.

Q What kind of weather ^{was it} warm, hot, cool or cold?

Ans. I do not remember just what kind
of weather it was, but I don't think
it was very cold, as we were walking
along without overcoats. It was
not raining or snowing that I
remember.

Q Have you rented, or received any rents from

any of the lands East of the line described by
you since the year 1895, if so who did you
rent to or from whom did you receive rents?

Ans. I have not rented it, to any one,
but have tenced some of it.

6. Did you not agree to pay rent for
the wheat you had sowed on the
~~land~~ rock fence field?

Ans. I never agreed to pay any rent on
any of it.

7. Has not your ~~son~~ rented parts of the land
East of said line for the year 1896, and
received the rents therefor.

Ans. Yes, he rented the new ground
to Pendergoss, because I did
not know how the suit was going,
and I made no kick about it.
There was no suit brought at the
time he rented it, but he was
contending for it, and I did
not know how it would go.

The further taking of depositions
in this Cause is adjourned until
tomorrow Feby 27th 1897. at
the same place.

This Feby 26th 1897.

H. C. Forslyn J. P.
Met on this march 2^d 1897. at
same place. and Samuel Poter
being present. and not wishing
to testify further.

And further this deponent doth not,
Samuel Poter

Virginia Lee County To wit:
I, Henry C. Goslyn, a Justice
of the Peace for said County and
State, do hereby Certify that the
foregoing deposition of Samuel
Pateet, was duly taken, sworn to
and subscribed, before me at the
times and place, and for the
purposes mentioned in the Caption
of the same.

Given under my hand this 3^d
day of March 1897.

H. C. Goslyn J. P.

S. B. Poter
vs. } In chcy

Samuel Poter

The deposition
of Samuel Poter

Received from H. Joslyn
the J. P. before whom
taken and filed March
3rd 1897
A. B. Munsey Clerk

J. P. Fee

\$3.⁰⁰